IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1903.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Petitioner,

vs.

CHRISTIE GRAIN & STOCK COMPANY & C. C. CHRISTIE,
Respondents.

BRIEF OF RESPONDENTS OPPOSING PETITION FOR CERTIORARI.

This case throughout is an effort on the part of the Board of Trade to establish the principle that it may engage in the business of keeping a bucket shop, and may enjoy a monopoly in that behalf which the courts must encourage and protect. At first blush, at least, this is novel if not startling doctrine, and yet, upon final analysis of the petition for the writ, as well as the brief filed in support thereof, it will be seen that the counsel's position is finally resolved into this bald assertion. The decision of

the Circuit Court of Appeals proceeds upon a finding of fact, which is overwhelmingly sustained by the testimony. The law applicable to such fact is not new nor strange, and has been many times recognized by this Court. It is conclusively found, and cannot be gainsaid, that judged by ordinary standards and principles of universal application, the petitioner is a keeper of a place wherein is permitted and carried on the illegal business of gambling in grains and provisions, denounced by the laws of Illinois, the state of petitioner's creation, as well as by the laws of the State of Missouri, and practically every other State in the Union. If the Board of Trade is not above and beyond the law, and must be judged by the same rule that is supposed to mete out the deserts of the highest or the lowest, it is guilty and has no standing in a court of conscience to invoke protection, much less the fostering of this illegal element of its business. Counsel has not directed the Court's attention to any testimony which even he will claim is opposed to the finding of fact made by the Court of Appeals, and this for the all-sufficient reason that there is no evidence of that kind in the record. It is true that he makes an effort to minimize the effect of the evidence upon which the finding of the Court is based by stating that it is supported by the testimony of but eleven witnesses. This would seem to be a reasonably sufficient number, particularly where there is no countervailing proof. Counsel also omitted to state that among those eleven witnesses are some of the largest and most influential dealers and members of the Board of Trade, including its president. So, then, the Circuit Court of Appeals was well justified in the statement which it made, appearing in the opinion as follows:

"The testimony of the president of the Board of Trade, Mr. William S. Warren, and a large number of the members of the Board, was taken for the purpose of showing the character of the transactions had upon the floor of the Exchange Hall; and there is absolute unanimity in their evidence to the effect that much the larger

part of these transactions were deals wherein it was not expected or understood that there would be any delivery of the article nominally dealt in, but the same were carried through and settled by methods clearly devised to avoid the need of actual delivery."

At this point attention is called to the fact that there are two independent classes of business transacted upon the Board of Trade which have no relation to each other. These are (1), present sales for cash, and (2), dealing in futures. The continuous market quotations, which give rise to the present controversy, are derived from the latter class of business solely, as it is transacted in the pits. The cash business is not transacted in the pits. The quotations do not emanate therefrom, and such element of business is a thing apart from this controversy. It is the other class which the Circuit Court of Appeals, as well as the Circuit Courts of the Southern District of Ohio, and of Indiana, and Missouri, upon substantially the same testimony, have denounced as being vicious and illegal. As said by the Circuit Court of Appeals:

"The estimates of the witnesses vary as to the per cent of the transactions in which actual delivery was contemplated or had, running from one to fifteen per cent, thus proving that at least eighty-five per cent, and more probably ninety-five per cent, of the transactions, would come under the condemnation of the Illinois Statute."

There are a variety of schemes and devices under color of which this gambling is conducted upon the Board. Among those which may be mentioned are "stop orders," "hedges," "rings," "transfer trades," "spreads," "direct settlements" and "scalping." We will hereafter briefly describe these various devices as explained by the testimony in the record. Suffice to say here that they are all countenanced by the rules and course of business permitted by the Board, and are not only designed with a view of avoiding the actual transfer and delivery of the

commodity dealt in, but are directly repugnant to and inconsistent with the idea of transfer and delivery.

The learned counsel for the Board, however, has taken the bull by the horns and seeks to show, in a somewhat labored argument, that one of these species of transactions, "hedging," has been, after all, very much maligned, and is indeed a very laudable and praiseworthy practice. This is ingenious, if not ingenuous, because it above all others has been most frequently and uniformly denounced by both statutes and courts as the very capsheaf of gambling, as containing the very quintessence of all the devices framed by the ingenuity of man to turn the nimble dollar by betting upon the rise or fall of the market.

The argument of the learned counsel contains a very curious blending of effort to show that the courts and statutes have obtained an erroneous impression of this pastime called "hedging," with the further effort to demonstrate that if the courts and statutes are right, it is, after all, a very useful and praiseworthy species of gambling, and forms a very necessary adjunct to respectable and legitimate business, and therefore should be upheld, anything in the statutes to the contrary notwithstanding. In the brief consideration which we wish to give this particular transaction, it will be more helpful if we dissever the consideration of its essential nature from the consideration of its supposed public utility.

This term is so widely and popularly known that it defines itself. It is the most simple and undisguised method of gambling which exists. The counsel confines his illustration to a supposed use which might be made of it by one who has become the actual owner of cash wheat for export or milling purposes, and who desires to protect himself against a decline in the market, but it is obvious that it is equally available to one who has concluded that he has been betting upon the wrong side of the market and had better get to cover. But assuming it is employed by the owner of cash grain, what is the object of the hedge? Is it with a view of actually selling and de-

livering the commodity? Not at all. From the very nature of things, at the time this hedging contract is entered into by the owner of the grain, it could not have been his intention to deliver the grain so sold against the cash grain he purchased. The only time, as shown by the proof, when any delivery is ever made on these hedging transactions is where an abnormal market on the Board has been created by a clique of men trying to put the price up, another illegal act. The average price of the hedging sale on the average normal market is not, and necessarily cannot be, as good as the average export price of the same grain. In connection with the illustration given by the counsel in his brief, it was the testimony of Mr. Marcy that Armour & Co. hedged fifty million bushels of grain that year on the Chicago Board of Trade, of which they delivered on contracts but about nine million, and that the balance of the fifty million bushels was closed out and settled by differences through the Clearing House. It, of course, is a necessary truth that if the average price of the hedging sale was as good as the average export price to the handlers of grain at the time delivery could be made on the hedging sale, the grain would never get beyond Chicago, but would there be piled up in the elevators and would remain there. No man would bother with handling the cash property except for a profit. The owner of the grain in the elevator will cancel his hedged sale on the Board, sell his grain in the elevator for export, incur the trouble and expense of freight and insurance rates for the all-sufficient reason that he will thereby make a profit. This could not be if the export value of the grain, under normal conditions, were not always sufficiently above the value of the cash grain in the elevator for the current month (meaning the immediate month, the time at which delivery on future contracts can be effected), to show a profit to the owner above its value for its delivery on a Board of Trade contract. If the grain sold on the hedging contracts on the Board of Trade, under normal and usual conditions, as

they obtain from month to month and year to year, were sold at a price which averaged as high for the owner as could be obtained elsewhere at the time delivery on such hedging contracts could be made, it would necessarily follow that Armour & Company, or any other large grain handler, would not incur the trouble of taking the grain into the elevator, making freight contracts for export and handle this cash grain when all they would otherwise have to do would be to turn over their certificates of grain on these hedging sales and get their money. It is further demonstrated by the testimony in this case that even in the case of Armour & Co., cited by the counsel in his brief by way of illustration, they have no intention of delivering the actual grain on the Chicago Board of Trade at the time of making the hedging contract, and the only contingency on which a delivery will be made is the one cited, namely, where a corner is attempted to be created on the Board, raising the price to an abnormal figure. In the very instance given by the counsel where the delivery was made, it was the result of this attempted corner and of a purpose subsequently formed as a result of the attempted corner. During that time there was a very great and unusual amount of manipulation in the Chicago market, and the prices of corn, wheat and oats, one after another, were abnormally elevated, and it was in that situation and under those conditions that Armour & Co. did deliver twenty per cent of the grain they handled.

Take another illustration referred to by the counsel, namely, that of the miller who hedges his purchases upon the Board of Trade. The wheat which he has bought and is in his possession is put into the mill and is being ground into flour. Will the counsel explain how this miller's intention could have been to deliver the wheat when he was engaged from day to day and from hour to hour in grinding it into flour, changing its form and condition in such respect that it would be an impossibility to deliver on the hedged sale.

There are two classes of men under the testimony who deal legitimately in wheat who also use the hedge. They are the miller and the exporter. The exporter will buy, say 200,000 bushels of wheat from Armour & Co. which they have hedged. He loads it into the car and starts it for Liverpool. Armour & Co., having no further use for the hedge on the wheat, go into the pit and cancel their hedge contract, but the exporter has 200,000 bushels of wheat afloat, and is taking the risk of the market between the time it is loaded out of the elevator in Chicago until it goes into the elevator in Liverpool. In order to protect himself *he* very naturally goes into the pit and sells an equal amount of wheat, and he will keep this open in Chicago until his wheat arrives in Liverpool and he has sold it there, when he will cancel his hedge trade in Chicago. Can it be explained how this exporter could have been possessed of an intention to deliver the wheat when it had passed the gates of Chicago and was on the ocean destined to Liverpool?

These are but illustrations of the only purpose which could animate a *bona fide* dealer in wheat in hedging his business on the Board of Trade. They are drawn from actual experiences testified to in the record, and it must be clear that in the very nature of things they refute the presumption of a purpose of delivery—a purpose which would nullify the efforts to profit from the commercial transactions. As vindicating the truth of this contention it is the testimony without contradiction, that the instances of actual delivery are not over fifteen per cent in any case, some witnesses putting them as low as one per cent of the volume of the transactions; and even in those infrequent instances the delivery is occasioned by a peculiar and abnormal market. So even such delivery is the result of a purpose conceived *after* the inception of the trade on the Board. Therefore, whether it be done by an owner and dealer in the commodity, or by one who has merely been gambling upon the other side of the market, the sum and substance of this hedging transaction is a mere

gambling device to protect from loss, to preserve the balance of account.

Let us now briefly consider some of the other devices countenanced, if not conceived, by the Board of Trade, and upon which the continuous quotations are founded.

"Rings" is a plan to do away with deliveries and to cancel transactions between the members. It can be illustrated in this way: A has July wheat sold to B at a certain price; B to C at a certain lower price; C to D again at a higher price; D to E at a different price, and so on until it has reached Z, and Z has again sold it back to A. There is provided by each firm or broker in this speculative business, settling clerks. After the markets have closed in the pit these clerks meet and "ring out," or cancel entirely around the ring the transactions by the casting up of the account or difference and settling the account or difference between the various parties. For the purpose of carrying out and effectuating this plan the Board of Trade itself, through its directors, each day fixes an arbitrary settling price by which all deals that are settled or cancelled or rung shall be determined. This is a purely arbitrary price fixed by the Board for the purpose of aiding the brokers in arriving at the matter of settling differences. The testimony shows that very seldom, if ever, when delivery time arrives, does the broker have anything outstanding which has not been rung up and cancelled in the manner described. It is worthy of observation that, whereas each firm selling in the pits keeps a ring book showing the settlements, they do not keep a cash sale book at all for the good reason that they have no use for it, as they are not engaged in such a trifling business as selling for cash. In this connection attention is called to section 6, pages 43 and 44, of the rules of the Board of Trade, from which it will be seen that the Board recognizes and furthers these settlements and provides that where one trade can offset another, they shall be *deemed* settled and the balance between the market value of the property covered by the trade and the sev-

eral contract prices shall be struck and shall immediately become due and payable to the party entitled thereto. It is further provided that the Board shall fix a settling price and post it in the Exchange Hall and in the settlement room of the Board, a room separately set apart and devoted to this use. The members are expressly required by the rules to keep a settlement book and furnish employees called "settling clerks," and are required to make reports showing net balances due to and from each other, and they are required to accompany their reports with a check covering the balances against them on contracts settled.

By Section 8, pages 44 and 45, of the same rules, a Clearing House is established to which the members are required to report any offset of any outstanding trade for future delivery under pains and penalties for omission of duty in this behalf. In the report which each member must submit of each day's transactions, his purchases and his sales are set forth and the Clearing House offsets these various trades among the members against each other, figures and determines the balances and closes each day's transaction. This Clearing House is designed and fostered solely for the furtherance of the dealing in futures upon the Board. The Board does not maintain a Clearing House to clear checks in payment for actual grain bought and sold. There is no similar system to adjust matter of weights and grades and claims and disputes which naturally arise to a greater or less extent in all transactions in the buying and selling of actual grain. There are no absolute or special rules governing the delivery and the receipt of the actual grain from one house to another, but the entire mechanism of an elaborate and complex system of rules and of checks and balances is designed for the cancellation of contracts for future delivery and the paying of differences.

The Chicago Board of Trade Clearing House is the most remarkable and highly evolved commercial contract cancelling machine that was ever invented. Its function

being that every day and at one price, it cancels *all* the contracts that *all* the members were busy in making during the whole business hours of the Board the previous day. And it performs the marvelous service year in and year out, thus saving the members one-half the work that would have to be done were contracts settled in the usual methods of business away from this Board.

In the light of these rules and of this method of doing business, is it not absurd to say that the delivery of the grain is the rule, or that the delivery is contemplated and intended at the time the trades are made? Could any sane man say that this marvelously ingenious system was conceived for the purpose of furthering deliveries? Nothing could be farther from its object. It is at complete odds with the idea of delivery. It is built up and perpetuated upon the thought of forestalling and preventing delivery. This is its governing principle, and although no witness had testified upon the subject, any court and any man of ordinary intelligence must know that it is against the truth to contend that the element of contemplated delivery has any part or lot in the business of speculating in these futures on the Board of Trade.

Another system of similar import is known as the transfer system. This is practiced largely by brokers in the pit by which one buys from another a commodity for future delivery and afterwards one of them arranges with the other to transfer the account to somebody else. It is merely the opposite of the ringing system. In other words, instead of the ring, two brokers will settle by transferring directly from one to the other, and thus balancing their trades.

Spreads arise where the commodity is bought in one market and sold in another. For instance, a party may buy a quantity of July wheat in Kansas City and sell the same quantity for the same delivery in Chicago upon the theory that the usual relative conditions between the two markets for the same commodity may widen before the delivery time, thus yielding a profit and enabling him to

close the deal out by selling the same quantity in the one market and buying the same in the other. This is resorted to, as shown by the testimony, largely by speculators in the pit, and it certainly cannot be said that there is any evident intention to deliver on any such transactions, or ever could be. The deal is made in the first instance by the speculative broker with the expectation that the difference only is to be the profit, and that is all that he is dealing in or expecting to accomplish.

Another system practiced very largely among the members is known as direct settlements, and may be explained in the language of Mr. Warren, the President of the Board, page 824 of the record in the Court of Appeals, as follows:

"Well, if I had bought from you 5,000 bushels of wheat for May delivery and sold it to Mr. Robbins, and Mr. Robbins had in turn sold it to you, we make an offset of those trades and each one pays or receives, as the case may be, the difference, based on the settling price of the day."

Scalping is another large and extensive method of conducting this speculating business, and is explained by Mr. Crosby, one of the prominent members of the Board, page 730, as follows:

Scalping is applied primarily to the members of the Board who stand in the wheat pit, for instance, and trade for their own account on small profits and small losses on the fluctuations in the market. * * * It is applied primarily to those traders who stand in the pit and trade for an eighth or sixteenth profit or loss, making a rapid turn in the market.

Q. Close out a trade as soon as they can get a small profit? A. Yes, or a small loss; as quick in one way as in the other.

ARE THESE DEALS MADE WITH ANY REAL INTENTION TO DELIVER THE PROPERTY SOLD OR RECEIVE THE PROPERTY BOUGHT?

In a brief and general way we have described the nature of the transactions upon the Board of Trade, which result in the continuous quotations. It is hard to see how anything approaching the dignity of an argument can be advanced in support of the assertion that these are legitimate and not gambling transactions, as defined in the statutes of Illinois. It certainly borders upon the absurdity to say that the intention of delivery forms any element in such business. In our brief in the Court below we went into statistics and demonstrated that if this business had reference to wheat *in esse* it would require several hundred times the entire product of the United States, and would result in a hitherto undreamt of congestion in elevators and warehouses in Chicago, and the piling of many millions of bushels upon the ground besides. In this connection attention is called to the statement made by the President of the Board, as detailed by Mr. Christie with reference to a conversation he had with Mr. Warren, page 528, as follows:

They had been discussing the question of giving the Christie Grain & Stock Co. these quotations, and Mr. Christie then testified:

"It resulted in their refusing to give me the quotations unless I would agree that every order I got I would place on the Board of Trade. That I would not agree to. Mr. Warren, in the course of the conversation, said that 'it had gotten to this point, that the bucket shops had got to quit or the Board of Trade had got to quit.' I said, 'That is a remarkable statement; do you mean to say that if all the men who bet on these markets, outside of the Board of Trade, should quit, that there would not be any more market for grain in Chicago?' 'Oh, no,' he said, 'there would be a cash market for grain.' I said, 'Wouldn't that market be there forever?' He said, 'Yes, that would be true, but there would be sixty men upon this floor who could do all of that, and there were

two thousand members of this Board who were trying to make a living.'"

This testimony has not been denied and it presents a remarkable situation indeed. Two things are strikingly demonstrated from it; first, that the Board regards bucket shopping with extreme disfavor only so long as it does not take place within its own *purlieus;* and, second, the admission that sixty men out of the total membership of two thousand can do all the cash business transacted on the Exchange, and that the remainder must depend for their livelihood upon the gambling instinct of the country, who are willing to back their judgment on the rise or fall of the market.

In this connection we also invite the Court's attention to the very lucid statement and analysis by Judge Thompson in the case of Board of Trade vs. Odell Commission Company, 115 Federal, 574, of the nature of the business of dealing in futures as practiced upon the Board of Trade. It is founded upon the same evidence which appears in this case, duplicate copies of the testimony having been taken and used in each case by agreement.

After an exhaustive discussion of the evidence, Judge Thompson stated his conclusion on page 588 as follows:

"The Court finds therefore, upon the evidence submitted, that the greater part of the dealings in futures on complainant's exchange are bucket shop transactions, and that they are permitted by complainant in violation of the laws of Illinois. It is suggested, however, that the public good will be best served by suppressing the smaller bucket shops, even upon the application of the complainant; and reference is made to 2 Pom., Eq. Jur., Sec. 941, where it is said that, 'in compliance with the demand of a high public policy, equity may aid a party equally guilty with his opponent.' But the situation here does not call for the application of that doctrine. The bucket shops are the offspring of the Chicago Board of Trade and kindred organizations, to which they still look for sustenance and life, and they can only be effectually suppressed by striking at the root of the evil. When this

species of gambling on the commercial and stock exchanges of the country ceases, the bucket shops will disappear, and not before.

"Many applications have been made by the bucket shops to enjoin complainant from depriving them of its quotations, and such applications have uniformly been refused, upon the ground that courts of equity will not lend their aid to carry on an illegal business, nor will they lend their aid to the complainant to maintain a place where bucket shopping is permitted in violation of the laws of Illinois and Ohio."

See also the later decision by Judge Adams of the Eastern District of Missouri in Board of Trade of Chicago vs. Donovan Commission Co., 121 Fed., 1012, the syllabus of which is as follows:

"Where it was proved that over ninety per cent of the transactions executed in the pits of a Board of Trade were mere gambling transactions, which both parties intended to settle by a payment of differences in the subsequent price of the commodities dealt in before the maturity of the option, quotations so obtained were of no legitimate value as tending to promote the commerce of the country, and dissemination thereof could not be restrained by such Board of Trade."

And on page 1014 that learned jurist remarked:

"The fact just alluded to that deliveries are rarely, if ever, actually made in cases of sales in the 'pits' for future delivery, and the great weight of evidence bearing on the issue, leads me irresistibly to the conclusion that no deliveries in such cases are intended or contemplated by either party. It is a time-honored maxim of the law that every person must be held to have intended the reasonable and usual consequences of his acts. The property therefore which the complainant asks this court to protect by its injunctive process is the right to monopolize the speedy dissemination of information instructing the public what wagers are being made on the future price of grain and other commodities by the members of Chicago Board of Trade. Information of the prices made in other parts of the Exchange on grain and other provisions

for actual consumption or export, or even for the purposes of holding for speculative profit in cases where the grain or other provisions are delivered in fact, or are intended to be delivered, might, and undoubtedly would, be very valuable to the public, and such information would promote legitimate trade and commerce, but the other kind of information, conveying intelligence as to the wagers that are made in the 'pits,' in my opinion has no legitimate tendency to promote the commerce of the country, but on the contrary, tends only to excite the gambling propensities of the public. Such is not a species of property which appeals to a court of conscience for protection."

A similar view has been taken by Judge Anderson of Indiana. It is thus to be remarked that six of the ablest members of the Federal bench have unhesitatingly condemned this business of dealing in futures in the manner practiced upon the Board of Trade as being in violation of the statutes of the states.

Neither is the fact that in a trifling percentage of instances deliveries are made, sufficient to leaven this mass of iniquitous and reprehensible practices. Even as respects such small percentage of deliveries, we have seen that they are casual and resultant from a fortuitous combination of circumstances occurring after the deals, and are not the result of a preconceived and concurring motive when the transaction was entered into.

But it is the exception which proves the rule and not the rule which proves the exception. The transactions as a whole are to be characterized by the customary and usual methods and results, and not by the infrequent and casual departures from the custom. The Court of Appeals of Illinois most aptly and forcibly expressed this point in Christie vs. Board of Trade, 94 Illinois Appeals, 229-236, as follows:

"If it could be said that there appeared to have been a use, slight and comparatively insignificant in extent, for purposes other than gambling, still the conclusion would be unaffected, that the regular and substantial busi-

ness of appellant, for which the quotations were sought, was an illegal business. *In a court of equity the pretext could not be permitted to hide the substance.*"

OUGHT THIS GAMBLING BUSINESS TO BE ENCOURAGED AS AN ADJUNCT TO LEGITIMATE TRADE?

We have seen that there pervades the argument of the Counsel for the Board of Trade a suggestion of this character. While we might grant, for the purpose of the argument, that it is very convenient, and possibly necessary, that the dealer in grain should be permitted to offset or protect his legitimate business by hedging upon the Board of Trade, and while we might go further and admit that there is no useful public purpose conserved by any gambling acts, and that everything of such nature ought to be wide open and untrammeled from police interference, this, after all, is a question of policy with which the courts have no concern. The Legislature of the State of Illinois, as well as practically every other state in the Union, have taken a different view upon this subject from that advanced by the counsel, and have placed the ban of their disapproval upon this character of business. It yet remains for any court to question the wisdom, much less the right, of the State to thus forbid.

THE BOARD OF TRADE IS WITHIN THE CONDEMNATION OF THE STATUTE.

It seems to be the argument in the brief for the petitioner that the statute of Illinois is leveled only against traders and not against the keeper of the place. In this counsel are clearly wrong. In the elaborate opinion of the Supreme Court of Illinois, Soby vs. People, 134 Ill., 66, which is quoted at length by the Circuit Court of Appeals in the case at bar, this is demonstrated. It is shown that the prior statute of Illinois was deficient in not including within its condemnation the keeper of the place, and that

the present act was passed for the purpose of remedying this very defect. Says the court:

"A consideration of the act will, as before indicated, show that it is directed against the keeper of any office or place, etc., wherein is conducted or permitted the buying or selling of grain or other produce on margins or otherwise, without any intention of receiving the property bought or delivering it if sold. Under this clause of the first section the offense consists in keeping the place, etc., where such buying or selling is conducted or permitted."

Counsel next argues that there is some special divinity which hedges about the Board of Trade and takes it out of the purview of this statute. No language is pointed out in the statute which expressly or by any necessary implication would seem to exclude the Board of Trade, if guilty, and under familiar rules of interpretation, no reason suggests itself why the law should be applied in all its rigor in the one instance and withheld from all force in the other. To the ordinary mind there is no particular sanctity hovering over a Board of Trade which should render it above or beyond the law, or make it any less amenable to police control than the humblest citizen in the land. It is somewhat difficult in a dignified argument to fitly characterize this assumption on the part of the Board. The moral obliquity of vision of the controlling powers of this corporation is curiously illustrated by this position. We believe it is the prevailing sense of the members of that institution that the correct definition of a bucket shop transaction is one which occurs *off* a Board of Trade. The element of intention with respect to delivery never penetrates their minds as having anything to do with the case. And thus this pharisee, panoplied with an incorporation certificate to "inculcate principles of justice and morality," is setting forth upon its holy mission of preventing bucket shopping *off* the Board of Trade, and incidentally (although, of course, unintentionally,) wiping out competition in the special and pecu-

liar brand of gambling, of which its members, from long and accustomed usage, have become past masters. To an ordinary mind it would seem reasonably clear that the Board of Trade will either have to knock out the beam in its own eye and mends its way to conform to the law, or will have to procure an amendment to the law to conform to its peculiar and jaundiced vision. So long as it is proceeding in the very teeth of the statute it is in a poor position to invoke a Court of Equity for protection of its illegal business.

It is essential to here further state that this case presents no question that in any way prevents the Board of Trade from continuing to conduct its business just as it has always done. The only effect of the decision was to hold that the Board of Trade could have no standing in a Court of Equity to assert any right to these quotations after they were made and had been sent into the country, so long as such quotations arose from violation of law. It is also worthy of more than passing comment in the light of the protestations of the purpose of the Board of Trade in launching upon this litigation, that the Christie Grain & Stock Company is a legitimate dealer in grain and provisions, and it is not pretended by counsel for the Board that the Christie Company in any respect possesses the elements of a bucket shop, or that it tolerates any bucket shop transactions among those who deal with it. The only offense that respondent is shown by the evidence to have been guilty of is that it would not agree to send all its business to the Board of Trade. This above all things demonstrates the utter insincerity and lack of good faith in the contentions put forth by the Board of Trade and its counsel as the reason for this litigation. The true object, however, of this suit and of this campaign which is being conducted by the Board does not lie so far beneath the surface as to be beyond the ken of reasonable men. It rests in the simple fact that the Board is engaged in a gigantic effort to secure an absolute and unmolested monopoly of all of the grain busi-

ness in the country as well as a monopoly in the gambling upon the rise and fall of markets.

IT APPEARING THAT THE MARKET QUOTATIONS ARISE FROM ILLEGAL AND GAMBLING TRANSACTIONS ON THE BOARD, THE BOARD OF TRADE HAS NO STANDING IN A COURT OF EQUITY TO ENFORCE ANY RIGHTS WITH RESPECT TO SUCH QUOTATIONS.

A mere statement certainly is sufficient upon this point. The argument in the brief of the Board of Trade is entirely apart from the question here. The very subject matter of this controversy are these quotations. It was for the purpose of securing an asserted right to them that the bill was filed. Eliminate the question of the quotations from the case and all purpose of the suit is gone. Surely when a court of equity discovered that the very foundation of the plaintiff's case was built upon a studied and deliberate evasion and violation of the statute of its creation, it could do nothing less than turn the complainant out of court. But for this violation of law these quotations in this form and volume would not be created and in existence. It is indubitable that no court, either at law or equity, would countenance a suit to enforce the terms of one of these gambling transactions. By what reason, then, could the court vindicate any other claim growing out of the same transaction? It is unnecessary to cite authority upon a proposition so elementary and salutary as this.

IN CONCLUSION.

We respectfully suggest to the Court that there is no reason why a writ of *certiorari* should be issued in this case. In Clews vs. Jameson, 182 U. S., the Court did

grant the writ. In that case, however, there existed a controversy over the facts, and the Court of Appeals misapplied the law to the facts. During the course of the opinion in Clews vs. Jameson, this Court laid down a clear rule for guidance in the determination of this question. The case at bar turned upon a simple issue of fact, the proof of which was all one way and overwhelming. This being so, the Court could do nothing less under the decision of Clews vs. Jameson than enter the decree which it did.

This application is in effect one to this Court not to accomplish a reconsideration of the law in its relation to admitted facts, but to have this Court reconsider and review the weight of testimony, and to find the facts contrary to the Court below. That, as we understand, has never been held to be the office of the writ of *certiorari*, and no writ has ever been granted by this Court for such purpose.

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